

**Stakeholder comments on proposed Chapter 500 rules**

Based on draft presented at May 12<sup>th</sup> stakeholder meeting  
Department responses appear in italics after each comment.

Comments submitted by John Simon:

The time available for discussion of the above at the Wednesday meeting on 5-12-04 was not sufficient to cover all the items needing discussion and some new items were introduced that really needed some time for reflection. The following comments are meant to complement the Wednesday meeting in a more comprehensive way.

- 1 – The Department is commended for the development of the flowchart (decision tree) related to chapter 500 requirements. After the final draft is prepared the legislature should have access to this chart.
- 2 – Page 2, line 7 change the phrase “Mere cutting of trees” to “The cutting of trees”. I am a conservationist fully aware of the desirability and need of cutting trees, but the term “mere” is inappropriate in conservation activity.

*This change has been made. However, subsequent concern has been raised that the deletion of “mere” changes this section’s meaning. The concern is that cutting of trees in combination with another activity; e.g., initiation of road construction; could indicate that construction has started. The word “mere” is included in the Maine Construction General Permit.*

- 3 – Page 2 under infiltration the definition is incomplete for the climate of Maine. With approximately 20 inches of our annual 40 inches of precipitation occurring during the non-growing season, most land in Maine can be considered draining some water to the groundwater every year. Infiltration design should be attentive to that water flowing into the groundwater during the growing season. Even Filters designed to store all water quality storms with zero groundwater recharge during the growing season will pass water to the groundwater during the winter months.

*The definition is a regulatory definition and is not intended to be complete from a scientific viewpoint. No change has been made.*

- 4 – Page 3 has a definition of lake or pond that includes (3) a small pond that is defined as less than 10 acres. This inclusion is completely unacceptable to me. The inclusion of it at the last minute is very troublesome to me. It is something that needs much more discussion. As far as I am concerned it expands the great ponds act and can lead to a host of abuses. It amazes me that the department wants these small ponds included, yet the rules allow much impervious area to go untreated from small projects for political reasons. The accumulative effect that everyone is always talking about will no doubt eventually catch up with us.

From my observations over the years, I have come to the conclusion that the department, although sincere in it’s efforts, has been incapable of policing the laws passed in a fair and even method. This incapacity is mostly from lack of human resources, and a tendency to rely on complaints only.

I will feel it necessary to speak before the legislature hearings against this provision in particular if it is in the final version sent to them.

*The definition of "lake or pond" has been revised to remove "a small pond" (less than 10 acres in size). Natural small ponds will continue to be viewed as wetland areas in terms of standards.*

5 – General. The phrases above and below need to be changed to previous and following when referring to referenced items.

*There are a number of acceptable ways to reference from one provision to another in a rule. The department has chosen to reference to specific sections in most cases (ex. "Section 4(B)(2)(b) below") and indicate "above" or "below" where this would help to guide the reader.*

6 - Page 6, I am assuming that because (a) Detention does not include "dry ponds" that dry ponds are included under (b) Filter. If this is incorrect then (a) needs to include "dry ponds" or (b) needs to include the term in the definition of detention pond.

*Dry ponds are included under "(b) Filter".*

7 – Page 7, under ( c ) the term municipality need to be expanded to include, any unit of state government such as municipality, county, or soil and water conservation district. Some counties and some SWCD's may choose to be involved in the stormwater utility work.

*The current statute provides that the department "may allow a municipality or a quasi-municipal organization, such as a watershed management district, to substitute a management system for storm water approved by the department for the permit requirement applicable to projects in a designated area of the municipality." (Title 38 MRSA Sec. 420-D(2))*

*Department staff believes that local government is the appropriate level for developing and implementing a watershed management plan and concludes that the current language in statute is sufficient. The proposed rule has been revised to include a "quasi-municipal entity" to be consistent with statute.*

8 – Page 13 under 5.C. Discharge to freshwater ..... The newly included reference to small pond should be removed. See comment 4 above.

*See response to comment 4 above.*

9 – Page 16, section D. (1) The erosion and sediment control plan should be renamed as "temporary erosion and sediment control plan". If not then (1) should limit the scope of individual BMP's to those BMP's with 1 acre or less in watershed.

*Department staff believes that the proposed language describing who can prepare an erosion and sedimentation control plan is adequate. If the allowance for certain professionals (non-engineers) were limited to areas where less than 1 acre is disturbed, then there would effectively be no allowance, since disturbances of less than 1 acre are not jurisdictional.*

10 – Page 24, part 10. A. (4). The transfer of license should be automatic with the transfer of property, unless the sales agreement fails to include an provision for the buyer to assume responsibility for any BMP's on the property upon purchase.

*Because of on-going obligations, it is important to ensure that the buyer is aware of what will be required. The department will allow transfers to take place under "permit by rule" to minimize the amount of processing.*

11 – Page 30 under Appendix A. From my 30 odd years of working in Maine, it has been my experience that construction before Thanksgiving can be satisfactorily completed. Significant mulching and a "winter seeding" will be necessary. A better definition of the period for winter construction would be from Thanksgiving through mid April.

*Department staff agrees with this assessment. The proposed language does allow construction in November, but requires that "these areas must be protected and runoff from them controlled by additional measures and restrictions." A note then references additional guidance titled, "Winter Construction Standards and Guidelines for Stabilizing Sites for Winter Construction." The guidance recommends mulching and winter seeding among other things.*

12 – Page 45, Appendix E. under 3. (ii) seepage control. In lieu of anti-seep collars the designer should be able to use the gravel filter design for along conduits that is included in the USDA-NRCS specification on farm ponds. Anti-seep collars are hard to install properly and the gravel filter is much more secure.

*Department staff agrees with this assessment. The proposed language would allow gravel filters; no change is necessary.*

13 – Page 46, under (d) (i) the four feet of minimum cover should be explained as necessary to protect from vehicle crushing and from frost. The Underdrain pipe is very durable and reliable but the thin wall construction relies mostly on the backfill for load support and load attenuation.

*Appendix E, Section 3(d) has been re-written. There is no longer a reference to four feet of minimum cover.*

14 – Page 47, under (d) (iv) the section needs to be re-written to read somewhat as follows: ...the gravel needs to be a minimum of 12 inches thick on top, and 6 inches on the sides and bottom. The gravel filter needs to be well graded, clean, and free draining. If crushed stone is used around the pipe, then the stone needs to be wrapped in a non-woven geotextile.

*Appendix E, Section 3(d) has been re-written and includes specifications for gravel bedding material around underdrain pipes.*

15 – Page 49, under 2. (b) (ii) Meadow buffer, The provision for protection with a layer of erosion control mix should be reduced to 3 inches and the need for seeding added. In discussions with Clyde Walton he indicated that vegetating 3 inches or less is easy. More than that is more difficult and could take a few more years to fully establish. If no vegetation is

expected then a new class of buffer, “ an organic mat buffer “ should be added. This is not a bad idea, but for aesthetic and habitat reasons should be avoided.

*Department staff concurs with this assessment and has revised this section.*

16 – Page 49, under 3. (a) the adding of a 6 inch deep swale on the upper end of a stone bermed level lip is a very good idea. The shape more easily constructed and maintained is a trapezoidal one with a bottom width one blade width wide. The resultant sediment can be easily removed, whenever necessary, by a front end loader.

*Department staff concurs that a trapezoid design is appropriate and has changed this section. While a project designer may elect to make the bottom width one blade width (of a dozer) the department believes that a 3 foot minimum bottom width is acceptable.*

17 – Page 50, under (b) Buffer sizing. A comment should finish this paragraph stating that the following tables were developed using a 1.25 inch 24 hour storm of type III distribution giving a minimum of 70 % Phosphorus removal and a minimum flow through time of 10 minutes.

*A note with this language has been added.*

18 – Page 52, under 5. (b) buffer sizing. I disagree on the elimination of meadow buffer in some columns and for non-wetland D soils. Allow them and put conservative numbers on them. A lot of the research studies showed little soil inflow but measured only on surface filtering by the grass and the grass duff in the filter areas.

*The table has been revised to allow meadow buffers with restrictions on the length of road or ditch draining to the buffer.*

Comments from Chris Olson:

Generally, I'd like to comment on the theme of "flexibility" that I've stressed throughout the process. The incorporation of BMPs into the rule seems necessary from your point of view, but I think it's important that the DEP promote the use of alternative measures, in order to keep improving and learning about new possible ways of dealing with unique situations. I think it's particularly important that the Compensation Fee Utilization Plan stay flexible, with DEP at the lead. It's important that developer's stay in compliance with town ordinances pertaining to stormwater, but review and implementation of the fee plan should be at the state level where responsibility for the rule rests. Eventually, there may be entities with "watershed-wide" authority, but until then, it should not rest with the individual municipalities. I know the argument against this has been the lack of DEP resources, but I think this is an important role for DEP.

*Department staff agrees with the need for flexibility and has included language in the rule allowing for alternate measures, where approved by the department. The compensation fee will be handled on a case by case basis. Plans for use of a fee may be prepared by an applicant and may entail payment to department or to the municipality where the project is located. In either case, department approval and municipal review are required, and in the latter case, municipal approval is also required. The department plans to develop additional guidance on compensation fees.*

Another general comment is on the need for pre-application meetings for projects that exceed basic standards. This requirement illustrates the complexity of this rule, despite the fact that BMPs (instead of standards) are being incorporated. Given the extensive detail of this rule, pre-application meetings for General Standards shouldn't be necessary, especially since no new staff are being added to meet this new workload. One of the goals of this re-write was to simplify the process, and new pre-application meetings suggest it's doing the opposite.

*The experience of department staff has been that pre-application meetings usually result in shorter processing times and fewer requests for additional information. This requirement can be waived by the department, however.*

4.B.(1)(b) Other stream, coastal and freshwater wetland watersheds. *Either add "freshwater" or put a comma after coastal or it's redundant.*

*This change has been made.*

4.C.(4) Channel limits and runoff areas. *Add language to the last sentence: Runoff from the project may not flood the primary access road to the project and public roads as a result of a 25-year, 24-hour storm and the design standard of the municipality, MDOT, and MTA.*

*In considering whether to add additional design standards, staff discussed whether it is appropriate to include standards in the rule set by entities other than the department. Staff's determination was that it would be most appropriate for the municipality to exercise its ability to establish more stringent standards through local ordinances and for MDOT and MTA to apply any restrictions they may deem appropriate in areas under their control.*

5.C. Discharge to freshwater wetlands, coastal wetlands, or small ponds. *MDOT has great concerns about expanding authority to small ponds. Especially because we haven't discussed what this means and they aren't defined anywhere.*

*The reference to small ponds has been removed. Natural small ponds will be treated as wetlands.*

9. Municipal Programs. *MDOT assumes that we are considered a "quasi-municipal" organization for the purposes of implementing a watershed management system via the Stormwater MOA. We need clarity on this.*

*MDOT's systems are considered under the MOA authorized by the Legislature at 38 MRSA 420-D(G) rather than the provisions for recognition of municipal or quasi-municipal management systems describes at 38 MRSA 420-D(3)(second paragraph). "Quasi-municipal does not refer to state agencies."*

Finally, I've attached Peter Newkirk's comments specific to the Buffer Standards. The concerns he's raised along with Charlie Hebson, not just on the buffer standards, but with the inclusion of all the detailed BMPs into the rule, are my most serious concern with these rules. By incorporating them, it makes the process simpler and more predictable for DEP to issue

licenses, but it fails to acknowledge the complexity of individual projects and site conditions. We're concerned that MDOT projects will have less flexibility to design what's appropriate for our site conditions. If these BMPs are in the rules, we may be unable to design what makes sense for our projects. At a minimum, we'd like to see some language that would allow MDOT to write our own buffer standards subject to your approval. Peter's comments follow:

*While BMPs are written into the proposed rules, language has been added giving the department flexibility to approve alternate designs.*

Peter NewKirk's comments:

F. General. We are concerned that the only section of this Appendix that allows for design variability is for the vegetative buffer with stone bermed level lip spreader. Each one of these options should be open for design variability if approved by the department. These types of BMPs work best when in series and the designer should be encouraged to do so and take credit for it.

*This flexibility is already provided for all the designs under the BMP standard in 4.B.3 in the main text of the rule.*

F. 1. (a) We do not understand the justification for the first two restrictions - only areas greater than one acre and only impervious flow lengths greater than 150 ft. The user should certainly be able to use these when the areas and flow lengths are smaller. We assume this was not the intent. Consider rewording.

*The inclusion of "only" was an error. The stone-bermed level lip spreader design may be used anywhere, but it must be used if any of the conditions in (I) – (iii) are met. The word "only" has been eliminated.*

F. 1. (d) (v) Stating that the average flow length can be no more than 100 feet will require the designer to calculate that average. If the filter strip is properly designed then all flow lengths should be allowed to be up to 150 feet. Recommend only holding it to the 150 feet.

*The design flow lengths are based on model runs with impervious areas averaging 100 feet, so if they were to be expanded beyond that average, the flow lengths would get longer and the buffer would become more restrictive. Department staff concludes it would be excessive for the mostly pervious residential areas that are most likely to use this option. The 150 foot maximum is given to allow some flexibility and is at least in part selected because after 150 feet the runoff is not likely to remain in sheet flow.*

F. 2. (b) (i) We recommend that you not allow Erosion Control Mix (ECM) as a temporary cover until sod has formed. Erosion Control Mix is not a good medium for growing a good sod. We feel that that it is certainly an option for a filter medium but should be an option under the Forest buffer specification. It is more akin to forest duff than sod. Our recommendation is to require diversion or protection with Erosion Control Blanket or other products approved by the department. It may be too late but consider allowing ECM under the Forest Buffer spec. We have more confidence it's ability as a filter medium than a large portion of natural forest ground cover.



*The department is proposing to allow ECM based on input that vegetation can be established if it is no thicker than three inches. If ECM is used alone, with no vegetation, then no evapo-transpiration will take place. We certainly can encourage its use to repair patches of forest buffer that, for whatever reason, have inadequate duff layers.*

F. 3. (a) States that the level lip spreader must be closed at the end. The designer should be given the allowance to install an emergency spillway from this practice. Or at least encouraged to check for routing and stability during flood flows.

*The entire stone berm should effectively serve as an emergency spillway. The objective should be to prevent channelizing flows, therefore creating an emergency spillway would not be desirable.*

F. 5. (b) We do not understand why non - wetland D soils are allowed for the vegetative buffers with stone bermed level lip spreader but not for the ditch turnouts. The other design parameters are conservative enough to justify allowing non- hydric D soils.

*The revised tables now allow this for turnout spacing of 200 feet or less.*

F. 6. See comments regarding average flow length. Again, we do not understand the restriction on non-hydric D soils. You should reiterate the percent impervious restriction stated in F. 1. (d). We are also concerned about the total flow lengths that you may experience on long narrow lots. The only restriction is the average 100 feet flow over impervious areas.

*Average flow length - see response to 2<sup>nd</sup> comment.*

*Non-hydric d soils - The revised table allows this for forested buffers but not for meadow buffers. Flow length would have to be 175 +, and the department is recommending that flow lengths be limited to no more than 150 feet. The alternative language in 4.B.3 of the main text of the rule would allow such a buffer if special information was provided or if modifications (e.g., imprinting) were proposed.*

*A limitation has also been added to limit the allowed flow length in the situation of a long, narrow lot.*

Comments from Sharon Newman:

General Comments:

\* There should be a greater degree of flexibility written into this rule, particularly with regard to BMPs. Because of the level of specificity written into the Appendices, there is the potential for individual project complexities and differences not to be taken into account. As we've discussed previously, the Appendices are more appropriate as guidance material.

*. Providing flexibility for treatment practices is a very important goal of the proposed revisions, but the need for flexibility needs to be balanced with enough specificity that it is clear to both an applicant and the department that a design will meet treatment standards. The level of detail in the appendices is necessary to facilitate design and review, eliminating guesswork. However, Section 4 contains language associated with particular standards that allows for alternative measures where appropriate and approved by the department, and includes the ability for the department to evaluate their potential performance and design specifications on a case by case basis.*

Specific Comments:

\* Section 3(A). Compensation Fee Utilization Plan. There should be flexibility in compensation fee utilization plan development, but DEP must provide oversight and a consistent set of standards.

*Providing both flexibility and consistent standards is a difficult task. The credits table for off-site mitigation can also provide guidance on the use of compensation fees. The department does plan to develop additional guidance on compensation fees.*

\* Section 5(C). Discharge to .... small ponds. These are not defined and it is not clear whether and to what extent DEP has authority to regulate stormwater discharges to small ponds.

*Reference to small ponds has been removed.*

\* Section 8(E)(2). Pre-construction and post-construction design. This seems poorly worded. Please revise to clarify that an applicant is not required to design a BMP after it is built.

*The reference to "pre-construction and post-construction design" has been dropped.*

\* Section 9. Municipal programs. "Quasi-municipal organization" is not defined. Please clarify.

*The department intends for the term "quasi municipal organization to have the same meaning as "quasi-municipal corporation or district" at 30-A MRSA 2351(4).*

*Reference: <http://janus.state.me.us/legis/statutes/30-a/title30-asec2351.html>*

Comments from Jeff Austin:

Please accept this letter as the pre-rulemaking comments of the Maine Municipal Association ("MMA") regarding the proposed revisions to the Stormwater rule, Chapter 500.

MMA supports effective regulations that will provide meaningful protection for Maine's waters. As a member of the stakeholder group, I believe the Department of Environmental Protection has done its best to gather information and accept input.



**1. Basis Statement Should Identify Policy Goals Outlined in Stakeholder Meetings.**

**The DEP should make its intentions regarding program simplification clear.**

The Department of Environmental Protection ("DEP") will assemble a basis statement for rulemaking in connection with Chapter 500. It would be helpful to the public and the legislature if that basis statement reflects some of the broader objectives that DEP has identified in the course of the stakeholder process.

One of the broad objectives that will likely receive widespread support is the goal of simplifying the regulatory scheme concerning construction and water quality. The two related programs that were most often discussed at the stakeholder group were the Maine Construction General Permit ("MCGP") and the Erosion and Sediment Control Law under Title 38 section 420-C. ("ESC")

My understanding following the stakeholder meetings is that these programs are essentially being merged into the Chapter 500 Stormwater program and application process. Oftentimes, when it appeared that Chapter 500 was being expanded to cover new areas, DEP clarified that these areas are not new; they are simply covered by other laws. The basis statement should reflect this DEP goal.

Accordingly, I would like the basis statement to include a reference to DEP's broader policy objective of simplifying administration of these three programs and that the requirements of ESC and MCGP are satisfied by compliance with the Chapter 500 rules.

If compliance with Chapter 500 will not satisfy all of the ESC and MCGP requirements, I would like the basis statement to clarify what aspects of ESC and MCGP are not satisfied by the Chapter 500 proposals.

**The DEP should indicate the statutory changes that it will support which are consistent with its goal of simplification.**

Keeping an eye on the need to propose legislation to implement the Chapter 500 rules, I would suggest that DEP state that it will propose to delete the ESC law (section 420-C) and include in 420-D a reference to ESC issues. It appears to me that eliminating ESC as a separate statutory requirement is consistent with what I heard at the stakeholder meeting, and is in fact necessary to fulfill the DEP goal of simplification.

The only substantive change that would appear to result from the elimination of the ESC law as an independent requirement is that projects less than one acre would be exempt from ESC requirements. However, given that one acre is the MCGP standard and the proposed Chapter 500 standard the ESC law is now the "outlying" inconsistent threshold. It should be brought into line consistent with DEP's stated goal of simplification and streamlining.

Further, most projects less than one acre are single-family homes and the legislature has frequently provided special exemptions to regulatory schemes that would otherwise impact single-family homes. Thus, the proposal to eliminate the ESC law would be consistent with general legislative policies.

Lastly, if the DEP's Chapter 500 policy objectives are realized, it is hard to believe that DEP will focus time and resources on the remnants of the ESC law, a non-permit program that

would require tracking down small projects, investigating them for violations, and where appropriate, taking action against violators. Instead of just letting this program pathetically wither on the vine of public disregard and governmental inattention, the DEP should prune it now in connection with the Chapter 500 program.

Again, if my understanding is incorrect, please explain why Maine will still need the ESC program in a way that will enable the public and the legislature to adequately assess whether the DEP goal of program simplification has been accomplished.

*The department will develop a Basis Statement for the rule that reflects the guiding principles that shaped the current draft. The department does not plan to recommend elimination of the Erosion & Sedimentation Control (ESC) Law. The ESC Law is not a permit based program and its requirements will be met "de facto" by anyone meeting the requirements of the Stormwater Rules, so there will be no extra burden placed on applicants due to its continued existence. The department finds that the cumulative impact of many smaller activities; i.e., those not large enough to need a Stormwater permit; can be significant and that even single family homes should be constructed in a manner to prevent significant erosion and sedimentation. The department has been using the ESC Law as a basis for a public awareness campaign and for marketing a voluntary contractor certification program, whereby excavation contractor receive training on proper erosion control techniques. This program has been very successful and the department plans to build on it. Elimination of the ESC Law would be counter-productive to this effort.*

**DEP should clearly indicate that existing staff time is adequate to implement Chapter 500 as drafted.**

A persistent concern of municipalities is the ability of state agencies to take-on additional duties without additional resources. At least one other new program was enacted by the legislature this session which would appear to require more work by the DEP. Yet DEP testified that they could manage the program within existing resources. This is another such situation.

The municipal concern is rooted in the fact that municipalities benefit from DEP efforts in many program areas. The fear is that new duties impact existing obligations. Sometimes municipalities feel as if they are the only ones guarding the resources devoted to existing and ongoing DEP programs.

At the stakeholder group, DEP explained that it will be able to manage Chapter 500 within existing resources for various reasons, including the benefits from program simplification. A statement somewhere from DEP will reassure the public, municipalities and the legislature which I have found to be increasingly skeptical and concerned about state agencies being stretched too thin. Please provide in the basis statement an explanation of how DEP can manage the seemingly burdensome and time consuming tasks of everything from pre-application meetings to the 5-year maintenance review/recertification process within existing sources.

*Being stretched too thin is a constant concern for department staff. In the case of the proposed rules, staff has concluded that simplification of requirements will indeed allow it to meet the administrative requirements of the program more effectively than under the current rules. The concern for lack of staff resources is also what has led staff to recommend placing the burden on permittees to certify every five years that their stormwater systems are operating as designed. Lack of maintenance has been cited as a major problem with current treatment*

*systems and the department lacks sufficient staff to do inspections on a regular basis. For this reason, placing the burden of re-certification on permittees is appropriate.*

**2. Chapter 500 should clearly identify who is responsible for ongoing maintenance and inspection obligations.**

One of the issues for which there seemed to be widespread agreement among the stakeholders is that the maintenance of stormwater control measures is spotty at best and that DEP's ability to use whatever leverage they have to ensure maintenance is currently weak. MMA's concern is that Chapter 500 not create a misimpression that municipalities will provide the solution.

Appendices B and C inadequately identify the parties responsible for maintenance and inspection. For example, Appendix A has a concise introductory paragraph identifying applicability. Appendices B and C do not have such a paragraph. Most of the paragraphs of B and C do not even appear to have nouns.

Compare the first sentences of each:

Appendix A: "A person who conducts, or causes . . ."

Appendix B: "Inspect disturbed and impervious . . ."

Appendix C: "Controls must be used . . ."

Without an introductory paragraph as exists for A, the obligations under B & C are not clearly assigned. Further, the drafting habit of regularly not using nouns exacerbates the confusion.

*Opening language in Appendix B has been changed to be consistent with that of Appendix A. Such a change is not necessary in Appendix C because the housekeeping performance standards apply to all projects.*

I believe this reflects DEP's ongoing frustration with the maintenance problem and that DEP is not entirely convinced it has found a solution. This is understandable because ongoing maintenance is a very difficult problem to solve. Our concern is that a fairly widespread preference for municipal responsibility over these systems is not shared by the municipalities. Thus, the more clarity DEP can provide in the language will help allay our concerns.

A minor issue is that to the extent B and C do begin to identify responsible parties, the same term is not used consistently. For example, on page 35 of the 5/12 draft from the last stakeholder meeting ("5/12 Draft"), item 3 has the "applicant" being responsible; item 5 has the "permittee" being responsible and item 4 has neither (the term "permittee" was stricken.)

*The term "applicant" has been removed from item 3. "Applicant" is used when the responsibility must be met prior to permitting, such as with an application submittal. "Permittee" is used when the responsibility must be met following the issuance of a department decision.*

While in some cases it may be appropriate to use applicant for some obligations and permittee for others, a more clear identification of the responsible party may be helpful.

On a similar note, I would request that the first sentence of item 5 on the same page 35 be restructured. Currently it states, "The permittee must submit . . . as described above *until it is formally*

*accepted by the municipality or, quasi-municipal . . .”* This structure gives a misleading impression to the public, developers and the legislature that municipal acceptance over these stormwater systems will regularly occur.

I believe the sentence should be rewritten as follows:

“The permittee must submit evidence that maintenance has been performed on all components of the stormwater management system as described above. If a municipality, quasi-municipal district, or legally created association chooses to accept a stormwater management system, it must provide a letter to the department stating that it assumes ....”

*This section has been revised so as to not imply that a municipality necessarily will eventually take over maintenance of a stormwater management system.*

### **3. DEP should indicate a willingness to be flexible to accommodate the compensation fee option.**

DEP has taken the necessary step of including a compensation fee plan in Chapter 500. The stakeholder group was generally concerned that one potential reading of state and federal laws would absolutely bar development in some areas of Maine. The compensation fee proposal appears to be a viable option to avoid such drastic, and I believe, unintended results.

However, DEP will need to be flexible in order for this apparently viable option to become a truly viable option. DEP has already demonstrated its flexibility in this regard by not restricting the fee option to only those areas with municipal plans. DEP should retain this proposed policy.

Yet, because the compensation fee program is new, there is not enough understanding of what types of proposals will be accepted by DEP. It would seem that DEP should use as much creativity and flexibility as possible in approving these fee proposals. The municipal concern is that if DEP's acceptance of non-municipal plans is rare the pressure will increase on municipalities to take on a new, unfunded management responsibility.

I do not have a suggestion as to where a DEP policy statement of compensation fee flexibility should appear. However, I do feel strongly that a statement should appear somewhere. The public, the developers, municipalities and the legislature should know that DEP will be looking to accommodate plans and not hamper them.

*The department does intend to provide for flexibility on the use of compensation fees and plans to develop guidance on how this program should operate. Input from stakeholders will be welcome in this process.*